DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Joint Application by BellSouth Corporation,	)	
BellSouth Telecommunications, Inc. and	)	CC Docket No. 01-277
BellSouth Long Distance for	)	
Provision of In-Region, InterLATA Services in	)	
Georgia and Louisiana	)	

REPLY COMMENTS OF
MPOWER COMMUNICATIONS CORP.

Russell I. Zuckerman
Senior Vice President and General Counsel
Richard E. Heatter
Vice President, Legal Affairs
Francis D.R. Coleman
Vice President, Regulatory Affairs
Mpower Communications Corp.
175 Sully's Trail – Suite 300
Pittsford, NY 14534
(716) 218-6568 (tel)
(716) 218-0165 (fax)

Eric J. Branfman
Patrick J. Donovan
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500 (Telephone)
(202) 424-7643 (Facsimile)

Counsel for Mpower Communications Corp.

Dated: November 13, 2001

RECEIVED

NOV 13 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Joint Application by BellSouth Corporation,	)	
BellSouth Telecommunications, Inc. and	)	CC Docket No. 01-277
BellSouth Long Distance for	)	
Provision of In-Region, InterLATA Services in	)	
Georgia and Louisiana	)	

REPLY COMMENTS OF
MPOWER COMMUNICATIONS CORP.

Mpower Communications Corp. ("Mpower"), submits these reply comments concerning the above-captioned Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance ("BellSouth") for Provision of In-Region, InterLATA Services in Georgia and Louisiana, filed October 2, 2001 ("Application").[1] In these reply comments, Mpower brings to the Commission's attention additional information concerning BellSouth's failure to provide nondiscriminatory access to Operations Support Systems and unbundled loops.

[1] *Comments Requested on the Joint Application By BellSouth Corporation for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the States of Georgia and Louisiana*, Public Notice, CC Docket No. 01-277, DA 01-2286, released October 2, 2001.

I. BELLSOUTH FAILS TO PROVIDE NONDISCRIMINATORY ACCESS TO OSS AND UNBUNDLED LOOPS

Checklist Item 2 requires that a BOC provide non-discriminatory access to network elements.[2] In analyzing whether a BOC provides non-discriminatory access to OSS for Section 271 purposes, the Commission determines "whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them."[3]

In its initial comments, Mpower brought to the Commission's attention substantial problems with BellSouth's OSS that disqualify it from Section 271 approval for Georgia and Louisiana at this time. These include outages with preordering systems,[4] requirements for multiple local service requests ("LSRs") and charges,[5] failure to "parse" preordering information,[6] excessive manual processing of orders,[7] and "blind" FOCs,[8] to name only a few.

Other commenters also provided ample evidence of serious deficiencies in BellSouth's OSS. AT&T correctly observes, for example, that:

> [A]lthough BellSouth has made some improvements in its systems since the *Louisiana II Order*, the reality is that is has fixed only a handful of the many

---

[2] 47 U.S.C. § 271(c)(2)(B)(ii).

[3] *Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, FCC 00-238 at ¶ 96 (June 30, 2000) ("*SBC TX 271Order*").

[4] Comments of Madison River Communications, LLC., Mpower Communications Corp., and Network Plus, Inc., CC Docket No. 00-277, filed October 22, 2001 at 4.

[5] *Id.* at 5.

[6] *Id.* at 7.

[7] *Id.*at 8.

[8] *Id.* at 11.

> problems that the Commission identified. Moreover, BellSouth violates its OSS obligations in many *additional* ways that the Commission did not address . . . .[9]

Similarly, WorldCom observes that:

> [I]f the Commission were to approve this application with the numerous critical defects in BellSouth's OSS, the Commission would be establishing a new low for permissible OSS. Never before have OSS defects of this magnitude that infect the systems in Georgia been unremedied at the time of section 271 approval.[10]

Among the problems raised by other commenters are reliability and integrity of performance data,[11] Telecommunications Access Gateway ("TAG") failures,[12] failure to provide "notifiers" such as FOCs, reject notices, or completion notices,[13] and inadequate OSS testing by KPMG.[14] These and other OSS problems led the Department of Justice to conclude that it "is not in a position to support the application on the present record."[15]

Although it is hardly necessary in order to warrant a denial of the application in light of other problems shown on the record, Mpower brings to the Commission's attention BellSouth's failure to provide automated Frame Due Times ("FDTs"). An automated FDT is an automated process that permits a CLEC to specify to the ILEC the date and time that an automated transfer of a customer's service from the ILEC to the CLEC will occur. This process enables the CLEC to test whether or not the customer's service was transferred on time and without trouble, or to work to restore service where the service is transferred with trouble. BellSouth permits automated transfers but will

---

9 *AT&T Comments* at 16; *see also*, CC Docket No. 01-277, Comments of WorldCom, Inc. at 2 (October 22, 2001) ("*WorldCom Comments*").

10 *WorldCom Comments* at i.

11 AT&T Comments at 32; DOJ Evaluation at 35.

12 Birch Comments at 30.

13 WorldCom Comments at 8.

14 DOJ Evaluation at 5; WorldCom Comments at i.

only specify a business day on which the automated transfer will occur. BellSouth will not provide a time of the transfer, even within a two hour window.[16] Accordingly, in order to manage customer expectations and assure that the transfer will not result in an outage, Mpower must order a loop with order coordination. In this process, an Mpower and BellSouth representative coordinate the transfer by a telephone conference at a time specified by BellSouth. BellSouth imposes a $36.00 nonrecurring charge for this coordination. This not only eliminates the efficiencies of automated transfers but additionally currently involves about $160,000 per month in nonrecurring charges to Mpower regionwide based on the current number of Mpower customers converting from BellSouth to Mpower.

Under current BellSouth practices, without the request for coordination or a reasonable FDT practice, Mpower only knows that sometime within the day the loop will be transferred, which involves a significant possibility that the customer will be without service for several hours or more if the transfer fails for some reason. Unfortunately, Mpower's experience with BellSouth in a number of related areas is so problematic in terms of missed appointments or cutovers that Mpower without order coordination or a reasonable FDT practice has no confidence that it could rely on BellSouth to perform the transfer of the customer reliably or without service outages. For example, in September 2001 BellSouth missed 18.33% of appointments for coordination of customer transfers (for customers with less than ten lines). In September 2001, BellSouth incredibly performed "hot cuts" early 87.16% of the time, resulting in some customer outages. As

---

[15] DOJ Evaluation at 2.

[16] SBC and Verizon offer a specific Frame Due Time that will be completed either an hour before or after the time specified in the FOC.

noted, Mpower has been so concerned that BellSouth's current practices would cause customers to experience significant problems that Mpower would not be able to promptly identify and correct that it is currently paying BellSouth approximately $160,000 per month regionwide for coordinated transfers. This risk of outages inherent in not knowing when during the day the transfer will take place and the nonrecurring charges for coordination in order to avoid this risk represent substantial barriers to competitive entry in BellSouth territory. Mpower does not know whether BellSouth's failure to provide automated FDTs is the result of technical inadequacies in BellSouth's OSS or a simple refusal to provide it, but in either event the result is substantial harm to competition.

It is noteworthy that Verizon and SBC provide an automated FDT process. The Commission premised its approval of SBC's application for Texas on SBC's offering of an automated FDT process.[17]Sprint does not provide an automated FDT process. However, because Sprint does not offer an FDT, it does not charge for the order coordination process. SBC recently acknowledged that it is unfair to impose a separate charge for coordination when an automated FDT is unavailable. SBC recently stated in testimony before the California Public Utilities Commission regarding its Section 271 application in that state:

> The reason the charging was removed in Texas was to make sure that we had a repeatable and sustainable FDT process; we felt it was only fair to provide another alternative, which was a coordinated cut and to waive the charges associated with that.[18]

---

17 In re application by SBC Communications, Inc., Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Prove In-Region, InterLATA Services in Texas, CC Dkt. No. 00-65, Memorandum Opinion and oOrder (rel. June 30, 2000) at ¶259.

18 *Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service*, R.95-04-043/I.95-04-044 (Filed April 26, 1995), Testimony of John Stankey, April 5, 2001, p. 12602.

BellSouth's failure to provide automated FDT's violates BellSouth's obligation to provide reasonable and nondiscriminatory access to OSS and to unbundled loops. Accordingly, apart from other deficiencies in the application, the Commission should deny BellSouth's application for failure to provide automated FDTs on a reasonable basis. Again, BellSouth's OSS is either clearly deficient in this regard, or BellSouth simply refuses to provide a reasonable automated FDT process in order to harm competition. BellSouth should be required to provide an automated FDT process, or at least not separately charge for coordination.

II. CONCLUSION

For the foregoing reasons, the Commission should deny the above-captioned application.

Respectfully submitted,

Eric J. Branfman
Patrick J. Donovan
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500 (Telephone)
(202) 424-7643 (Facsimile)

Counsel for Mpower Communications Corp.

Russell I. Zuckerman
Senior Vice President and General Counsel
Richard E. Heatter
Vice President, Legal Affairs
Francis D.R. Coleman
Vice President, Regulatory Affairs
Mpower Communications Corp.
175 Sully's Trail – Suite 300
Pittsford, NY 14534
(716) 218-6568 (tel)
(716) 218-0165 (fax)

I, Anita Goff, hereby certify that on November 13, 2001, I caused to be served upon the following individuals the Reply Comments of Mpower Communications Corp, in Docket #01-277.

Via Courier:

Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
CY-B402
445 Twelfth Street, S.W.
Washington., DC 20554

Janice Myles (12 copies)
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
Room 5-B145, 445 Twelfth Street, S.W.
Washington, DC 20554

James Davis-Smith
U.S. Department of Justice
Antitrust Division
Telecommunications Task Force
1401 H St. NW, Suite 8000
Washington, DC 20005

Qualex International
Portals II
445 12th Street, S.W., Room CY-B402
Washington, DC 20554

Via Overnight Delivery:

Michael K. Kellogg
Sean Lev
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
Sumner Square
1615 M Street, N.W., Suite 400
Washington, DC 20036

Jeffrey S. Linder
Suzanne Yelen
Wiley Rein & Fielding, LLP
1776 K Street, N.W.
Washington, D.C. 20006

Leon Bowles
Division of the Telecommunications Unit
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, GA 30334

Arnold Chauviere
Utilities Division Head
Louisiana Public Service Commission
One American Place, Suite 1630
Baton Rouge, LA 70821-9154

Via First Class Mail

James G. Harralson
Fred G. McCallum, Jr.
Jim O. Llewellyn
Lisa S. Foshee
4300 BellSouth Ctr., 675 West Peachtree Street
Atlanta, GA 30375

Bennett L. Ross
125 Perimeter Center West
Room 376
Atlanta, GA 30346

Victoria K. McHenry
365 Canal Street
Suite 3060
New Orleans, LA 70130

Jonathan B. Banks
1133 21st Street, N.W.
Room 900
Washington, D.C. 20036

Anita E. Goff

Anita E. Goff